

## Update: Michigan Circuit Court Benchbook

### CHAPTER 1

#### General Rules Governing Court Proceedings

##### 1.6 Order to Appear

###### A. In General

Insert the following text before the first full sentence in the partial paragraph at the top of page 14:

See e.g., *Ewin v Burnham*, \_\_\_ Mich App \_\_\_, \_\_\_ (2006) (MCL 600.1852(2), in part, authorizes Michigan courts to order a person residing or who is found in Michigan “to give his testimony or statement or to produce documents or other things for use in a proceeding in a tribunal outside this state”).

## CHAPTER 2

### Evidence

#### Part I—General Matters (MRE Articles I, II, III, V, and XI)

#### 2.4 Foundation

##### B. Requirement of Authentication or Identification—MRE 901

In an order dated September 14, 2006, the Michigan Supreme Court reversed the Court of Appeals' ruling in *People v Jambor (Jambor I)*, 271 Mich App 1 (2006). *People v Jambor (Jambor II)*, \_\_\_ Mich \_\_\_ (2006). The Court held that “[t]he exhibits were sufficiently authenticated as fingerprint cards relating to the offense, containing complaint number, address, signature of the preparing officer, and were referenced and described in a report prepared by the officer as confirmed by a witness whose credibility was not questioned, thereby satisfying MRE 901. The Court remanded the case to the Court of Appeals for consideration of the remaining issues raised by the parties in the appeal and cross-appeal filed in the Court of Appeals. *Jambor II*, *supra* at \_\_\_.

## CHAPTER 3

### Civil Proceedings

#### Part I—Pleadings, Parties, and Commencement of Action (MCR Subchapters 2.000–2.200)

### 3.1 Jurisdiction and Venue

#### E. Constitutional Limitations

When personal jurisdiction is authorized by MCL 600.701(3) and MCL 600.745, and the parties consent via a valid forum selection clause to personal jurisdiction in Michigan, enforcement of the forum selection clause “does not violate due process so long as a party will not be deprived of its day in court.” *Lease Acceptance Corp v Adams*, \_\_\_ Mich App \_\_\_, \_\_\_ (2006).

Pursuant to MCL 600.701(3) personal jurisdiction can be established by “[c]onsent, to the extent authorized by the consent and subject to the limitations provided in [MCL 600.745].” *Lease Acceptance Corp, supra* at \_\_\_. MCL 600.745(2) provides that if the party’s consent “provides the only basis for the exercise of jurisdiction, a court of this state shall entertain the action” if all of the requirements enumerated in MCL 600.745 are satisfied. *Lease Acceptance Corp, supra* at \_\_\_.

#### G. Standard of Review

Insert the following text before Section 3.2 near the top of page 135:

A trial court’s decision as to whether Michigan is a reasonably convenient place for trial under MCL 600.745(2)(b), is reviewed for an abuse of discretion. *Lease Acceptance Corp v Adams*, \_\_\_ Mich App \_\_\_, \_\_\_ (2006). Therefore, “as long as the trial court’s decision falls within a ‘principled range of outcomes,’ the decision on that subissue must be affirmed.” *Id.* at \_\_\_ (citation omitted).

## CHAPTER 3

### Civil Proceedings

#### Part V—Trial (MCR Subchapter 2.500)

#### 3.43 Subpoenas

##### A. In General

Insert the following text after the second sentence in this subsection on page 224:

See e.g., *Ewin v Burnham*, \_\_\_ Mich App \_\_\_, \_\_\_ (2006) (MCL 600.1852(2), in part, authorizes Michigan courts to order a person residing or who is found in Michigan “to give his testimony or statement or to produce documents or other things for use in a proceeding in a tribunal outside this state”).

## CHAPTER 3

### Civil Proceedings

#### Part VII—Rules Governing Particular Types of Actions (Including MCR Subchapters 3.300—3.600)

##### 3.62 Contracts

###### G. Third Party Beneficiary

On page 256, insert the following case summary after the existing text in this subsection:

In general, although a property owner ultimately benefits from the work performed by a subcontractor on the property owner's property, the property owner is not an intended third-party beneficiary of the contract between the general contractor and the subcontractor. *Kisiel v Holz*, \_\_\_ Mich App \_\_\_, \_\_\_ (2006). "Absent clear contractual language to the contrary, a property owner does not attain intended third-party-beneficiary status merely because the parties to the subcontract knew, or even intended, that the construction would ultimately benefit the property owner." *Id.* at \_\_\_ (citations omitted). As a result, a property owner generally cannot sue for breach of contract a subcontractor who performed work on the property owner's property. *Id.* at \_\_\_.

## CHAPTER 4

### Criminal Proceedings

#### Part IV—Pleas (MCR Subchapter 6.300)

##### 4.35 Withdrawal of a Guilty Plea

###### G. Appealing a Guilty Plea

Insert the following text after the January 2006 update to pages 394–395:

See *People v William Fitzgerald James*, \_\_\_ Mich App \_\_\_, \_\_\_ (2006), where the Court of Appeals reiterated the ruling in *Halbert v Michigan*, 545 US 605 (2005), that an indigent defendant has the right to appointed counsel for the purpose of seeking leave to appeal to the Michigan Court of Appeals. The Court noted also that, pursuant to *Halbert, supra*, the defendant had “not waive[d] his right to the appointment [of appellate counsel] at the time of entering his guilty plea on the basis of the circuit court’s mere advisement that waiver would occur.” *William Fitzgerald James, supra* at \_\_\_\_\_. Because no right to appellate counsel existed at the time the defendant pleaded guilty, the defendant could not have “intentionally relinquish[ed] a known right.” *Id.* at \_\_\_\_\_.

## CHAPTER 4

### Criminal Proceedings

#### Part VI—Sentencing and Post-Sentencing (MCR Subchapters 6.400 and 6.500)

#### 4.54 Sentencing—Felony

##### B. Sentencing Guidelines

Insert the following text after the April 2006 update to page 449:

See e.g., *People v Freeman*, \_\_\_ Mich \_\_\_ (2006),\* where even though the sentence imposed on the defendant was within the guidelines range as calculated without the scoring error, resentencing was required because the trial court referenced a different guidelines range (the guidelines range as calculated using the *incorrect* OV score) when it imposed the defendant's initial sentence.

\*Order for resentencing in lieu of granting leave to appeal the decision in *People v Freeman*, memorandum opinion of the Court of Appeals, issued February 16, 2006 (Docket No. 258261).

## CHAPTER 4

### Criminal Proceedings

#### Part VI—Sentencing and Post-Sentencing (MCR Subchapters 6.400 and 6.500)

#### 4.54 Sentencing—Felony

##### F. Appeal Rights

Insert the following text before the January 2006 update to page 455:

See *People v William Fitzgerald James*, \_\_\_ Mich App \_\_\_, \_\_\_ (2006), where the Court of Appeals reiterated the ruling in *Halbert v Michigan*, 545 US 605 (2005), that an indigent defendant has the right to appointed counsel for the purpose of seeking leave to appeal to the Michigan Court of Appeals. The Court noted also that, pursuant to *Halbert, supra*, the defendant had “not waive[d] his right to the appointment [of appellate counsel] at the time of entering his guilty plea on the basis of the circuit court’s mere advisement that waiver would occur.” *William Fitzgerald James, supra* at \_\_\_\_\_. Because no right to appellate counsel existed at the time the defendant pleaded guilty, the defendant could not have “intentionally relinquish[ed] a known right.” *Id.* at \_\_\_\_\_. However, the Court of Appeals expressly stated that it did not decide whether, under *Halbert*, a defendant *could* waive the right to appointed counsel “under appropriate circumstances.” *William Fitzgerald James, supra* at \_\_\_\_\_.



## CHAPTER 4

### Criminal Proceedings

#### Part VI—Sentencing and Post-Sentencing (MCR Subchapters 6.400 and 6.500)

##### 4.61 Post-Appeal Relief

###### E. Relief

The Michigan Supreme Court did not adopt the proposed amendments to MCR 6.508. ADM File No. 2003-04, issued June 26, 2006, effective September 1, 2006. Therefore, delete the asterisk (and the corresponding margin text) after “MCR 6.508” in the second paragraph of this subsection on page 471.

